

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

NEONODE SMARTPHONE LLC.,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Civil Action No. 6:20-cv-00507-ADA
	§	
SAMSUNG ELECTRONICS CO. LTD.	§	JURY TRIAL DEMANDED
AND SAMSUNG ELECTRONICS	§	
AMERICA, INC.,	§	
<i>Defendants.</i>	§	

**AGREED PROTECTIVE ORDER
REGARDING THE DISCLOSURE AND USE OF DISCOVERY MATERIALS**

WHEREAS, Plaintiff Neonode Smartphone LLC and Defendants Samsung Electronics Co. Ltd. and Samsung Electronics America, Inc., hereafter referred to as “the Parties,” believe that certain information that is or will be encompassed by discovery demands by the Parties involves the production or disclosure of trade secrets, confidential business information, or other proprietary information;

WHEREAS, the Parties seek a protective order limiting disclosure thereof in accordance with Federal Rule of Civil Procedure 26(c):

THEREFORE, it is hereby stipulated among the Parties and ORDERED that:

1. Each Party may designate as confidential for protection under this Order, in whole or in part, any document, information, or material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such document, information, or material (“Protected Material”). Protected Material shall be

designated by the Party producing it by affixing a legend or stamp on such document, information, or material as follows: “CONFIDENTIAL.” The word “CONFIDENTIAL” shall be placed clearly on each page of the Protected Material (except deposition and hearing transcripts) for which such protection is sought. For deposition and hearing transcripts, the word “CONFIDENTIAL” shall be placed on the cover page of the transcript (if not already present on the cover page of the transcript when received from the court reporter) by each attorney receiving a copy of the transcript after that attorney receives notice of the designation of some or all of that transcript as “CONFIDENTIAL.”

2. Any document produced before issuance of this Order, including pursuant to the Court’s Order Governing Proceedings - Patent Case, with the designation “Confidential” or the like shall receive the same treatment as if designated “CONFIDENTIAL” under this order and any such documents produced with the designation “Confidential - Outside Attorneys’ Eyes Only” shall receive the same treatment as if designated “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY” under this Order, unless and until such document is re-designated to have a different classification under this Order.
3. With respect to documents, information, or material designated “CONFIDENTIAL,” “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL - SOURCE CODE” (“DESIGNATED MATERIAL”),¹ subject to the provisions herein and unless otherwise stated, this Order governs, without limitation: (a) all documents, electronically stored information, and/or things as defined by the Federal Rules of Civil Procedure; (b) all pretrial, hearing or deposition testimony, or documents marked as exhibits

¹ The term DESIGNATED MATERIAL is used throughout this Protective Order to refer to the class of materials designated as “CONFIDENTIAL,” “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL - SOURCE CODE,” individually and collectively.

or for identification in depositions and hearings; (c) pretrial pleadings, exhibits to pleadings and other court filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests, and complete or partial summaries prepared from any DESIGNATED MATERIALS shall also be considered DESIGNATED MATERIAL and treated as such under this Order.

4. A designation of Protected Material (*i.e.*, “CONFIDENTIAL,” “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL - SOURCE CODE”) may be made at any time. Inadvertent or unintentional production of documents, information, or material that has not been designated as DESIGNATED MATERIAL shall not be deemed a waiver in whole or in part of a claim for confidential treatment. Such inadvertent or unintentional production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege or immunity for such information. Any Party that inadvertently or unintentionally produces Protected Material without designating it as DESIGNATED MATERIAL may request destruction of that Protected Material by notifying the recipient(s) as soon as reasonably possible after the producing Party becomes aware of the inadvertent or unintentional disclosure, and providing replacement Protected Material that is properly designated. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced Protected Materials and any documents, information, or material derived from or based thereon.
5. “CONFIDENTIAL” documents, information, and material may be disclosed only to the following persons, except upon receipt of the prior written consent of the designating Party, upon order of the Court, or as set forth in Paragraph 16 herein:
 - (a) Outside counsel of record in this Action for the Parties.

- (b) Employees of such counsel assigned to and reasonably necessary to assist such counsel in the litigation of this Action.
- (c) In-house counsel for the Parties who either have responsibility for making decisions dealing directly with the litigation of this Action, or who are assisting outside counsel in the litigation of this Action.
- (d) Up to and including three (3) designated representatives of each of the Parties each of whom is actively engaged in assisting outside counsel with respect to this litigation, is not engaged in competitive decision making, and needs access to such information in order to assist in this litigation, and their support staff, provided however that disclosure to any person pursuant to this subpart must be reasonably necessary for the litigation of this Action, except that any Party may in good faith request the other Party's consent to designate one or more additional representatives, the other Party shall not unreasonably withhold such consent, and the requesting Party may seek leave of Court to designate such additional representative(s) if the requesting Party believes the other Party has unreasonably withheld such consent.
- (e) Outside consultants or experts retained for the purpose of this litigation, and direct reports and other support personnel of such consultants or experts, provided that:
 - (1) such consultants or experts are not presently employed by the Parties or of an affiliate of a Party hereto for purposes other than this Action; (2) before access is given, the consultant or expert has completed the Undertaking attached as Appendix A hereto and the same is served upon the producing Party with a current curriculum vitae of the consultant or expert, including a list of other cases in which

the individual has provided a report or testified (at trial or deposition) and a list of companies that the individual has been employed by or provided consulting services pertaining to the field of the invention of the patent(s)-in-suit or the products accused of infringement within the last four years and a brief description of the subject matter of the consultancy or employment, at least ten (10) days before access to the Protected Material is to be given to that consultant or expert to object to and notify the receiving Party in writing that it objects to disclosure of Protected Material to the consultant or expert. The Parties agree to promptly confer and use good faith to resolve any such objection. If the Parties are unable to resolve any objection, the objecting Party may file a motion with the Court within fifteen (15) days of receipt of the notice, or within such other time as the Parties may agree, seeking a protective order with respect to the proposed disclosure. The objecting Party shall have the burden of proving the need for a protective order. No disclosure shall occur until all such objections are resolved by agreement or Court order.

- (f) Independent litigation support services, including persons working for or as court reporters, graphics or design services, jury or trial consulting services, and photocopy, document imaging, and database services retained by counsel and reasonably necessary to assist counsel with the litigation of this Action.
- (g) The Court and its personnel.

6. A Party shall designate documents, information, or material as “CONFIDENTIAL” only upon a good faith belief that the documents, information, or material contains confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such documents,

information, or material.

7. Documents, information, or material produced pursuant to any discovery request in this Action, including but not limited to Protected Material designated as DESIGNATED MATERIAL, shall be used by the Parties only in the litigation of this Action and shall not be used for any other purpose. Any person or entity who obtains access to DESIGNATED MATERIAL or the contents thereof pursuant to this Order shall not make any copies, duplicates, extracts, summaries, or descriptions of such DESIGNATED MATERIAL or any portion thereof except as may be reasonably necessary in the litigation of this Action. Any such copies, duplicates, extracts, summaries, or descriptions shall be classified DESIGNATED MATERIALS and subject to all of the terms and conditions of this Order.
8. To the extent a producing Party believes that certain Protected Material qualifying to be designated CONFIDENTIAL is so sensitive that its dissemination deserves even further limitation, the producing Party may designate such Protected Material “CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY,” or to the extent such Protected Material includes computer source code and/or live data (that is, data as it exists residing in a database or databases) (“Source Code Material”), the producing Party may designate such Protected Material as “CONFIDENTIAL - SOURCE CODE.”
9. For Protected Material designated CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY, access to, and disclosure of, such Protected Material shall be limited to individuals listed in Paragraphs 5(a–b) and (e–g); provided, however, that the designating Party shall accommodate reasonable requests to provide summary information to in-house counsel designated pursuant to Paragraph 5(c) who exercise no competitive decision-making authority on behalf of the client and reasonably require access to such information.

10. For Protected Material designated CONFIDENTIAL - SOURCE CODE, the following additional restrictions apply:

- (a) Access to a Party's Source Code Material shall be provided only on "stand-alone" computer(s) (that is, the computer may not be linked to any network, including a local area network ("LAN"), an intranet or the Internet). The stand-alone computer(s) may be connected (at the producing Party's choice) to (i) a printer, or (ii) a device capable of temporarily storing electronic copies solely for the limited purposes permitted pursuant to Paragraphs 10(h and k) below. Additionally, except as provided in Paragraph 10(k) below, the stand-alone computer(s) may only be located at the offices of the producing Party's outside counsel or its vendors.
- (b) The stand-alone computer(s) will be maintained in a secured room at an office of the producing Party's outside counsel, located in the United States, or at another mutually agreeable location. The producing Party shall be entitled to have a person observe all entrances and exits from a viewing room, and shall be entitled to visually inspect and monitor the printer connection to the stand-alone computer(s). Except as authorized under Paragraph 10(j) below, a reviewer may not remove any printed copies of source code from the source code review room. If any individual inspecting Source Code Material seeks to take notes, all such notes will be taken by hand in bound (spiral or other type of permanently bound) notebooks or on a laptop that cannot connect to the Internet (notetaking laptop). Except for the aforementioned notetaking laptop, no electronic devices (including cell phones, PDAs, cameras, recordable or storage media (e.g., USB thumb drive, etc.), or computers will be permitted inside the source code review room. No loose paper

or other paper that can be used in a printer may be brought into the secure room. A reviewer may not copy portions of the Source Code Material into the reviewer's notes in an effort to circumvent any printing limitations set forth herein. Any such notes must be marked on each page with "CONFIDENTIAL - SOURCE CODE." A reviewer of a receiving Party may not leave work product or other materials to which the receiving Party claims privilege in the room used to inspect the producing Party's Source Code Material or on a producing Party's stand-alone computer(s).

- (c) The receiving Party shall make reasonable efforts to restrict its requests for such access to the stand-alone computer(s) to normal business hours, which for purposes of this Paragraph shall be 9:00 a.m. through 5:00 p.m. However, upon reasonable notice from the receiving Party, the producing Party shall make reasonable efforts to accommodate the receiving Party's request for access to the stand-alone computer(s) outside of normal business hours. The Parties agree to cooperate in good faith such that maintaining the producing Party's Source Code Material at the offices of its outside counsel or its vendors shall not unreasonably hinder the receiving Party's ability to efficiently and effectively conduct the prosecution or defense of this Action.
- (d) The producing Party shall provide the receiving Party with information explaining how to start, log on to, and operate the stand-alone computer(s) in order to access the produced Source Code Material on the stand-alone computer(s).
- (e) The producing Party will produce Source Code Material in computer searchable format on the stand-alone computer(s) as described above.

- (f) The receiving Party, at its own expense, may make a reasonable request that the producing Party install licensed software on the stand-alone computer to assist with review of the producing Party's Source Code Material, provided that such software will reasonably aid the receiving Party to perform its review of the Source Code Material consistent with all of the protections herein. The receiving Party must provide the producing Party with appropriate access to such software tool(s) at least five (5) business days in advance of the date upon which the receiving Party wishes to have the additional software available for use on the stand-alone computer(s). Timely requests for the installation of such software will not be unreasonably denied so long as the requested software is compatible with the operating system, and other software necessary to make the Source Code Material available for inspection, installed on a stand-alone computer(s), does not side-step any of the security features enabled on the stand-alone computer(s) (e.g., enable connection and use of USB thumb drives), and does not allow the receiving party to compile or otherwise alter the Source Code Material. The producing Party will install and confirm installation of said software on the stand-alone computer(s) prior to the date the receiving Party seeks access.
- (g) Access to Source Code Material shall be limited to outside counsel and up to five (5) outside consultants or experts² (*i.e.*, not existing employees or affiliates of a Party or an affiliate of a Party or competitor identified by the Producing Party with

² For the purposes of this Paragraph, an outside consultant or expert is defined to include the outside consultant's or expert's direct reports and other support personnel, such that the disclosure to a consultant or expert who employs others within his or her firm to help in his or her analysis shall count as a disclosure to a single consultant or expert, provided that such personnel helping in the analysis of Source Code Material shall be disclosed pursuant to Paragraph 5(e).

reasonable specificity) retained for the purpose of this litigation and approved to access such Protected Materials pursuant to Paragraph 5(e) above. A receiving Party may include excerpts of Source Code Material in an exhibit to a pleading, expert report, or deposition transcript (collectively, “Source Code Exhibits”), provided that the Source Code Exhibits are appropriately marked under this Order, restricted to those who are entitled to have access to them as specified herein, and, if filed with the Court, filed under seal in accordance with the Court’s rules, procedures, and orders.

- (h) To the extent portions of Source Code Material are quoted in a Source Code Exhibit, either (1) the entire Source Code Exhibit will be stamped and treated as CONFIDENTIAL - SOURCE CODE or (2) those pages containing quoted Source Code Material will be separately stamped and treated as CONFIDENTIAL - SOURCE CODE.
- (i) Except as set forth in Paragraphs 10(j) and 10(k) below, no photographs, images, scans, or other electronic copies of Source Code Material shall be made without prior written consent of the producing Party, except as necessary to create documents that, pursuant to the Court’s rules, procedures, and order, must be filed or served electronically.
- (j) The receiving Party shall be permitted to make a reasonable number of printouts and photocopies of Source Code Material, which shall be no more than a total of ten (10) copies of each portion of printed source code, all of which shall be designated and clearly labeled “CONFIDENTIAL - SOURCE CODE,” and the receiving Party shall maintain a log of all such files that are printed or photocopied. If the

producing Party objects to the production of the requested Source Code Material because the request is excessive, it shall state its objection within three (3) business days. For purposes of this Paragraph, printed portions of Source Code Material that exceed fifty (50) continuous pages or that exceed 500 pages or more of an entire Source Code Material software release shall be rebuttably presumed to be excessive and, upon objection, cannot be printed for a permitted purpose absent agreement of the producing Party, which shall not be unreasonably withheld, or an order from the Court. In the event of a dispute, the producing Party will maintain the printed Source Code Materials until the parties meet and confer, within three (3) business days of the objection being raised. If the parties cannot resolve the dispute, the receiving Party will raise it with the Court. Upon printing hard copies of any such portion of Source Code, the receiving Party shall log the location of the electronic file(s) from which each printout is made such that the electronic file(s) may be readily located on the stand-alone computer(s).

- (k) Should such printouts or photocopies be permissibly transferred back to electronic media, such media shall be labeled “CONFIDENTIAL - SOURCE CODE” and shall continue to be treated as such.
- (l) If the receiving Party’s outside counsel, consultants, or experts obtain printouts or photocopies of Source Code Material, the receiving Party shall ensure that such outside counsel, consultants, or experts keep the printouts or photocopies in a secured locked area in the offices of such outside counsel, consultants, or expert. The receiving Party may also temporarily keep the printouts or photocopies at: (i) the Court for any proceedings(s) relating to the Source Code Material, for the dates

associated with the proceeding(s); (ii) the sites where any deposition(s) relating to the Source Code Material are taken, for the dates associated with the deposition(s); and (iii) any intermediate location reasonably necessary to transport the printouts or photocopies (*e.g.*, a hotel prior to a Court proceeding or deposition).

- (m) For depositions, the receiving Party shall not transport and bring more than one copy of any printed Source Code Material, and the Source Code Material shall be kept in a sealed envelope during transport. The producing Party will bring or deliver an additional two printed copies of specified Source Code Material printed pursuant to paragraph 10(j) for use by the deponent and receiving Party's counsel. No less than three (3) business days prior to the deposition, the receiving Party shall specify whether it requests for the producing Party to copy and bring: (a) a hard copy of all previously printed Source Code Material to the deposition, or (b) a PDF, text-searchable copy of all previously printed Source Code Material on a password-protected removable electronic media (*i.e.*, an encrypted USB thumb drive), but not both. In the event of option (b), the producing Party will make a computer available at the deposition to use the password-protected removable electronic media. Any hard copies of Source Code Material shall be kept in a sealed envelope during transport. Copies of Source Code Material that are marked as deposition exhibits shall not be provided to the Court Reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit by its production numbers. All paper copies of Source Code Material brought to the deposition shall remain with counsel.
- (n) A producing Party's Source Code Material may only be transported by the receiving

Party at the direction of a person authorized under paragraph 10(g) above to another person authorized under paragraph 10(g) above, on paper or password-protected removable electronic media (*e.g.*, an encrypted DVD, CD-ROM, or flash memory “stick”) via hand carry, Federal Express, or other similarly reliable courier. Source Code Material may not be transported or transmitted electronically over a network of any kind, including a LAN, an intranet, or the Internet, with the exception that such transmission may be made if it is reasonably necessary to the litigation of this action (for example, to electronically file a document with the Court under seal pursuant to Paragraph 10(g)). Access to any transmission made pursuant to this exception must be limited to those individuals listed in Paragraph 10(g).

11. Any attorney representing a Party, whether in-house or outside counsel, and any person associated with a Party and permitted to receive the other Party’s Protected Material that is designated CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY and/or CONFIDENTIAL - SOURCE CODE (collectively “HIGHLY SENSITIVE MATERIAL”), who obtains, receives, has access to, or otherwise learns, in whole or in part, the other Party’s HIGHLY SENSITIVE MATERIAL under this Order shall not prepare, prosecute, supervise, or assist in the preparation or prosecution of any patent application pertaining to the field of the invention of the patents-in-suit during the pendency of this Action and for one year after its conclusion, including any appeals. To ensure compliance with the purpose of this provision, each Party shall create an “Ethical Wall” between those persons with access to HIGHLY SENSITIVE MATERIAL and any individuals who prepare, prosecute, supervise or assist in the preparation or prosecution of any patent application pertaining to the field of invention of the patent-in-suit. Nothing in

this Order shall prevent a person with access to HIGHLY SENSITIVE MATERIAL from participating in a PTO proceeding, *e.g.*, IPR or PGR, except for that person shall not participate—directly or indirectly—in the amendment of any claim(s) of any patent application pertaining to the field of the invention of the patents-in-suit during the pendency of this Action and for one year after its conclusion, including any appeals.

12. Nothing in this Order shall require production of documents, information, or other material that a Party contends is protected from disclosure by the attorney-client privilege, the work product doctrine, or other privilege, doctrine, or immunity. If documents, information, or other material subject to a claim of attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity is inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any such privilege, doctrine, or immunity. Any Party that inadvertently or unintentionally produces documents, information, or other material it reasonably believes are protected under the attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity may obtain the return of such documents, information, or other material by promptly notifying the recipient(s) and providing a privilege log for the inadvertently or unintentionally produced documents, information, or other material. The recipient(s) shall gather and return all copies of such documents, information, or other material to the producing Party, except for any pages containing privileged or otherwise protected markings by the recipient(s), which pages shall instead be destroyed and certified as such to the producing Party.
13. There shall be no disclosure of any DESIGNATED MATERIAL by any person authorized

to have access thereto to any person who is not authorized for such access under this Order.³

The Parties are hereby ORDERED to safeguard all such documents, information, and material to protect against disclosure or intrusion by any unauthorized persons or entities. Accordingly, unless expressly provided otherwise in this Paragraph, DESIGNATED MATERIAL may only be stored by (a) the receiving Party on either a firm-managed computing device (not on a personal device), which includes safeguards to prevent the installation of unauthorized software, and which also complies with a firm-documented cybersecurity policy, or on a document management and review system, implementing industry-standard security measures, operated by a third-party engaged by the receiving Party, or (b) by a vendor, expert, or consultant retained by a party for the purpose of this litigation (including but not limited to: trial support vendors, translators, expert support teams), provided that such vendor, expert, or consultant has completed the Undertaking attached as Appendix A and is bound by this Protective Order. In the event that the receiving Party, or any of its outside experts or consultants, experiences or discovers a data or security breach that may implicate the producing Party's DESIGNATED MATERIAL, the receiving Party shall inform the producing Party as soon as practicable and, in any event, no later than fourteen (14) days from becoming aware of any such breach.

14. Nothing contained herein shall be construed to prejudice any Party's right to use any DESIGNATED MATERIAL in taking testimony at any deposition or hearing provided that the DESIGNATED MATERIAL is only disclosed to a person(s) who is: (i) eligible to have access to the DESIGNATED MATERIAL by virtue of his or her employment with the

³ The parties are reminded that any use of the tools of technology do not eliminate a party's obligation to ensure those tools comply with the requirements of this Protective Order including for example the obligations of confidentiality and destruction of information at the conclusion of the case.

designating Party; (ii) identified in the DESIGNATED MATERIAL as an author, addressee, or copy recipient of such information; (iii) although not identified as an author, addressee, or copy recipient of such DESIGNATED MATERIAL, has, in the ordinary course of business, seen such DESIGNATED MATERIAL; (iv) a current or former officer, director or employee of the producing Party or a current or former officer, director, or employee of a company affiliated with the producing Party; (v) counsel for a Party, including outside counsel and in-house counsel (subject to Paragraph 9 of this Order); (vi) an independent contractor, consultant, and/or expert retained for the purpose of this litigation; (vii) court reporters and videographers; (viii) the Court; or (ix) other persons entitled hereunder to access to DESIGNATED MATERIAL. DESIGNATED MATERIAL shall not be disclosed to any other persons unless prior authorization is obtained from counsel representing the producing Party or from the Court.

15. Parties may, at the deposition or hearing or within thirty (30) days after receipt of a deposition or hearing transcript, designate the deposition or hearing transcript or any portion thereof as “CONFIDENTIAL,” “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL - SOURCE CODE” pursuant to this Order. Access to the deposition or hearing transcript so designated shall be limited in accordance with the terms of this Order. Until expiration of the 30-day period, the entire deposition or hearing transcript shall be treated as CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY.
16. Any DESIGNATED MATERIAL that is filed with the Court shall be filed under seal and shall remain under seal until further order of the Court. The filing Party shall be responsible for informing the Clerk of the Court that the filing should be sealed and for placing the

legend “FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER” above the caption and conspicuously on each page of the filing. Exhibits to a filing shall conform to the labeling requirements set forth in this Order. If a pretrial pleading filed with the Court, or an exhibit thereto, discloses or relies on DESIGNATED MATERIAL, such confidential portions shall be redacted to the extent necessary and the pleading or exhibit filed publicly with the Court.

17. The Order applies to pretrial discovery. Nothing in this Order shall be deemed to prevent the Parties from introducing any DESIGNATED MATERIAL into evidence at the trial of this Action, or from using any information contained in DESIGNATED MATERIAL at the trial of this Action, subject to any pretrial order issued by this Court.
18. A Party may request in writing to the other Party that the designation given to any DESIGNATED MATERIAL be modified or withdrawn. If the designating Party does not agree to re-designation within ten (10) days of receipt of the written request, the requesting Party may apply to the Court for relief. Upon any such application to the Court, the burden shall be on the designating Party to show why its classification is proper. Such application shall be treated procedurally as a motion to compel pursuant to Federal Rule of Civil Procedure 37, subject to the Rule’s provisions relating to sanctions. In making such application, the requirements of the Federal Rules of Civil Procedure and the Local Rules of the Court shall be met. Pending the Court’s determination of the application, the designation of the designating Party shall be maintained.
19. Each outside consultant or expert to whom DESIGNATED MATERIAL is disclosed in accordance with the terms of this Order shall be advised by counsel of the terms of this Order, shall be informed that they are subject to the terms and conditions of this Order, and

shall sign an acknowledgment that they have received a copy of, have read, and have agreed to be bound by this Order. A copy of the acknowledgment form is attached as Appendix A.

20. The parties agree that drafts of any expert report, declaration, or disclosure, including drafts of reports, as well as any notes made by experts, are protected work product and shall not be discoverable regardless of the form of the draft and notes, unless the expert relies on the aforementioned as a basis for his or her opinion and the information contained is not otherwise disclosed. The parties further agree that communications of any form relating to this action between (a) a party to these actions, a representative of a party, or the parties' attorneys, and (b) the parties' expert(s), whether testifying or non-testifying, are protected work product and shall not be discoverable, except to the extent the communications identify facts, data, or assumptions that the parties' attorneys provided and that the expert(s) relied upon in forming any opinions expressed or to be expressed in an expert report or trial testimony and are not otherwise disclosed.
21. To the extent that any discovery is taken of persons who are not Parties to this Action ("Third Parties") and in the event that such Third Parties contend the discovery sought involves trade secrets, confidential business information, or other proprietary information, then such Third Parties may agree to be bound by this Order.
22. To the extent that discovery or testimony is taken of Third Parties, the Third Parties may designate as "CONFIDENTIAL," "CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY," and/or "CONFIDENTIAL - SOURCE CODE" any documents, information, or other material, in whole or in part, produced by such Third Parties. The Third Parties shall have ten (10) days after production of such documents, information, or other materials to

make such a designation. Until that time period lapses or until such a designation has been made, whichever occurs sooner, all documents, information, or other material so produced or given shall be treated as “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY” in accordance with this Order.

23. Within sixty (60) days of final termination of this Action, including any appeals, all DESIGNATED MATERIAL, including all copies, duplicates, abstracts, indexes, summaries, descriptions, and excerpts or extracts thereof (excluding excerpts or extracts incorporated into any privileged memoranda of the Parties), shall at the producing Party’s election either be returned to the producing Party or be destroyed. The receiving Party shall verify the return or destruction by affidavit furnished to the producing Party, upon the producing Party’s request.
24. Outside counsel for the Party or Parties receiving Protected Material may retain a copy of all pleadings, motions and trial briefs (including all supporting and opposing papers and exhibits thereto), written discovery requests and responses (and exhibits thereto), deposition transcripts (and exhibits thereto), trial transcripts, exhibits offered or introduced into evidence at trial, and any work-product containing DESIGNATED MATERIAL, provided however that any DESIGNATED MATERIAL contained in any such documents retained by Outside Counsel of record shall remain subject to the protections of this Order.
25. The failure to designate documents, information, or material in accordance with this Order and the failure to object to a designation at a given time shall not preclude the filing of a motion at a later date seeking to impose such designation or challenging the propriety thereof. The entry of this Order and/or the production of documents, information, or material hereunder shall in no way constitute a waiver of any objection to the furnishing


thereof, all such objections being hereby preserved.

26. Any Party knowing or believing that any other Party is in violation of or intends to violate this Order and has raised the question of violation or potential violation with the opposing Party and has been unable to resolve the matter by agreement may move the Court for such relief as may be appropriate in the circumstances. Pending disposition of the motion by the Court, the Party alleged to be in violation of or intending to violate this Order shall discontinue the performance of and/or shall not undertake the further performance of any action alleged to constitute a violation of this Order.
27. Production of DESIGNATED MATERIAL by any Party shall not be deemed a publication of the documents, information, or material (or the contents thereof) produced so as to void or make voidable whatever claim the Parties may have as to the proprietary and confidential nature of the documents, information, or other material or its contents.
28. Nothing in this Order shall be construed to effect an abrogation, waiver, or limitation of any kind on the rights of each of the Parties to assert any applicable discovery or trial privilege.
29. Pursuant to Federal Rule of Evidence 502(d) and (e), the production of a privileged or work product protected document is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of a privileged or work product protected document in this case as part of a production is not itself a waiver. Nothing in this Order shall be interpreted to require disclosure of irrelevant information or relevant information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege or immunity. The inadvertent production by a Party of Discovery Material subject to the attorney-client privilege, work-product protection, or any other applicable privilege or protection will not waive the

applicable privilege and/or protection. Upon a request from any Producing Party who has inadvertently produced Discovery Material that it believes is privileged and/or protected, each Receiving Party shall immediately destroy or return such Protected Material or Discovery Material and all copies to the Producing Party. The parties do not waive any objections as to the production, discoverability, admissibility, or confidentiality of documents and ESI. Moreover, nothing in this Order shall be interpreted to require disclosure of information subject to privacy protections as set forth in law or regulation, including information that may need to be produced from outside of the United States and/or may be subject to foreign laws.

30. Each of the Parties shall also retain the right to file a motion with the Court to modify this Order for any reason, including (a) to allow disclosure of DESIGNATED MATERIAL to additional persons or entities if reasonably necessary to prepare and present this Action; and (b) to apply for additional protection of DESIGNATED MATERIAL.

Entered this 22nd day of January 2025.


ALAN D. ALBRIGHT
UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

NEONODE SMARTPHONE LLC.,
Plaintiff,

V.

SAMSUNG ELECTRONICS CO. LTD.
AND SAMSUNG ELECTRONICS
AMERICA, INC.,
Defendants.

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Civil Action No. 6:20-cv-00507-ADA

JURY TRIAL DEMANDED

APPENDIX A

UNDERTAKING OF EXPERTS OR CONSULTANTS REGARDING PROTECTIVE ORDER

I, _____, declare that:

1. My address is _____ . My current employer is _____ . My current occupation is _____ .
2. I have received a copy of the Protective Order in this action. I have carefully read and understand the provisions of the Protective Order.
3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action any information designated as “CONFIDENTIAL,” “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL - SOURCE CODE” that is disclosed to me.

4. Promptly upon termination of these actions, I will return all documents and things designated as “CONFIDENTIAL,” “CONFIDENTIAL - OUTSIDE ATTORNEYS’ EYES ONLY,” or “CONFIDENTIAL - SOURCE CODE” that came into my possession, and all documents and things that I have prepared relating thereto, to the outside counsel for the Party by whom I am employed.
5. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Signature _____

Date _____